

Memorandum 2015-18

Government Interruption of Communication Service

In 2013, the Legislature enacted Senate Concurrent Resolution 54 (Padilla), which directs the Commission¹ to study two related topics involving government action that affects private communications.

The main topic assigned by SCR 54 is state and local agency access to customer information from communication service providers (i.e., surveillance of electronic communications). A tentative report on the law governing that issue has been distributed for public comment.² Further work on that topic has been deferred until after the end of this legislative year.³

In the interim, the Commission will turn to the second topic assigned by SCR 54: “government interruption of communication services.”⁴ This memorandum begins the discussion of that topic.

The following background materials are attached as an Exhibit:

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| | <i>Exhibit p.</i> |
| • Bus. & Prof. Code § 149. | 1 |
| • Bus. & Prof. Code § 7099.10 | 1 |
| • Pub. Util. Code § 2876 | 2 |
| • Pub. Util. Code § 5322 | 2 |
| • Pub. Util. Code § 5371.6 | 4 |
| • Pub. Util. Code § 7907 | 7 |
| • Pub. Util. Code § 7908 | 7 |
| • 2006-2007 National Security Telecommunications Advisory Committee Issue Review 139-40 (“Standard Operating Procedure 303; Emergency Wireless Protocols”) | 11 |

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Tentative Recommendation on *State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements* (April 2015).

3. See Minutes (Feb. 2015) p. 4.

4. *Id.*

The staff received considerable assistance in this study from King Hall Law School student Bryanna Brandalesi. The staff would like to thank Ms. Brandalesi for her work.

SCOPE OF STUDY

Most of the text of SCR 54 discusses government surveillance of electronic communications. However, there is one clause near the end of the resolution that addresses something other than surveillance. That clause requires the Commission to make recommendations to

Clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information *or in order to take action that would affect a customer's service*, with a specific description of whether a subpoena, warrant, court order, or other process or documentation is required...⁵

The resolution does not provide any guidance on what is meant by an action “that would affect a customer’s service,” but secondary sources provide some evidence of the Legislature’s intention. That evidence is discussed below.

Background Material from Senator Padilla

Shortly after SCR 54 was approved, Senator Padilla provided the staff with background material relating to the new study. The transmittal letter explained:

I am enclosing background information that led to my introduction of SCR 54. This information includes an opinion of the Office of Legislative Counsel dated April 25, 2013, as well as a list of statutes that may be a helpful starting point for the Commission in reviewing current law within the scope of SCR 54.⁶

According to the Legislative Counsel’s opinion, Senator Padilla had requested, among other things, examples of code sections relevant to “government’s authority ... to take action relating to individuals’ use of a communications service.”⁷

Examples provided in the opinion include code sections that authorize government to terminate telephone numbers used to advertise certain unlawful

5. 2013 Cal. Stat. res. ch. 115 (emphasis added).

6. Letter from Senator Alex Padilla to Brian Hebert (Sept. 12, 2013) (on file).

7. Ops. Cal. Legis. Counsel, No. 1304153, (April 25, 2013) (hereafter, “Legislative Counsel Opinion”), p. 1 (on file).

services,⁸ to block cell phone use in prison,⁹ and to suspend telephone service in a hostage or barricaded resistance situation.¹⁰ Collectively, those examples are described in the opinion as laws that “relate to the government’s authority to take action on the provision of communications services to a customer.”¹¹ The sections listed in the opinion were also included in a separate background document entitled “List of statutes possibly within the scope of SCR 54.”

The foregoing suggests that Senator Padilla intended for SCR 54 to include a study of government’s authority to terminate or suspend the use or provision of communication services.

Senator Padilla’s interest in that topic is not surprising. In 2012, he introduced Senate Bill 1160, which would have regulated government’s ability to interrupt communication services. That bill was approved by the Legislature, but vetoed by Governor Brown. The veto was not overridden.

The analysis of SB 1160 suggests that it was introduced in part as a response to an incident in which Bay Area Rapid Transit (“BART”) police suspended cell phone service within certain underground BART stations:

In December 2011, the board of directors of the Bay Area Rapid Transit (BART) district adopted the nation’s first local policy specifying when wireless service can be shut down. This followed BART’s shutdown of wireless service for three hours in August 2011 in an attempt to stop text communication by individuals organizing a rally related to an issue of great public interest. The shutdown led to criticism of BART for depriving thousands of people of the ability to call 911 and to comparisons to oppressive governments around the world that shut down communications systems in order to silence public protests and demand for democratic freedoms.

BART’s new policy allows BART to interrupt wireless service if BART officials determine there is strong evidence of imminent unlawful activity that threatens public safety, substantial disruption of public transit services, or destruction of BART property, among other considerations. The policy does not require any court or other review of BART officials’ determination that a shutdown is justified.¹²

8. Bus. & Prof. Code §§ 149, 7099.10; Pub. Util. Code §§ 5322, 5371.6.

9. Penal Code § 4576.

10. Pub. Util. Code § 7907.

11. Legislative Counsel Opinion, *supra* note 7, at 7.

12. Senate Energy, Utilities, and Communications Committee Analysis of SB 1160 (April 9, 2012), p.2.

In 2013, Senator Padilla introduced Senate Bill 380, which was a modified version of the reform proposed in the vetoed bill (SB 1160). That new bill was eventually signed into law.¹³ (The provision added by SB 380, Public Utilities Code Section 7908, is discussed at length later in this memorandum.)

Although an author's intention is not necessarily the same as that of the Legislature as a whole, it seems fairly clear that Senator Padilla intended the Commission to review the law on government *interruption* of communications.

Legislative Analyses

The Committee on Judiciary's analysis of SCR 54, in both the Assembly and Senate, focuses almost entirely on electronic communication surveillance. Neither committee's analysis says much about government action that "affects" communication services.

However, both of the analyses mention the Legislative Counsel opinion that is discussed above. The Senate analysis states that the opinion provides examples of statutes that "restrict an individual's use of a communications service."¹⁴ The Assembly analysis describes the opinion as providing examples of laws that relate to government's authority to affect "the provision of communications service to a customer."¹⁵

This implies two things: (1) the judiciary committees found the Legislative Counsel opinion to be relevant background for the study assigned by SCR 54, and (2) the judiciary committees see the second part of the study as relating to government's ability to "restrict an individual's use" of communication services by customers or affect the "provision of communications service to a customer."

Conclusion

While the language of SCR 54 can be read very broadly, as authorizing the Commission to study any government action that would "affect" a customer's communication service, it seems fairly clear that a narrower study was intended. The history discussed above suggests that the intention was for the Commission to clarify government's authority to *restrict* customer communications (including clarification of the procedure by which such a restriction would be directed to a communication service provider).

13. 2013 Cal. Stat. ch. 371.

14. Senate Committee on Judiciary Analysis of SCR 54 (July 2, 2013), p. 4.

15. Assembly Committee on Judiciary Analysis of SCR 54 (Aug. 27, 2013), p. 3.

The staff will proceed on that understanding of the scope of the study, unless the Commission directs otherwise.

ANALYTICAL APPROACH

In this study, the Commission will need to answer two questions:

- To what extent should government be allowed to interrupt private communications?
- What legal process should be required when government interrupts private communications?

There does not appear to be a single set of answers to those questions, because the legal and policy issues involved will vary significantly with the circumstances of the interruption.

What are those circumstances? The staff sees a number of scenarios in which government might wish to interrupt communications, each presenting a different combination of material factors. Those factors include the public purpose served by the interruption, the extent to which the interruption is narrowly tailored to achieve that public purpose, the direct or indirect effect on constitutionally-protected speech and due process rights, and the degree of urgency. The presence or absence of such factors in a particular scenario could lead to very different legal and policy conclusions.

Accordingly, the staff intends to organize the analysis in this study around the different scenarios that are likely to arise, with an eye toward describing each scenario based on its unique combination of material factors. This will allow materially different situations to be analyzed and treated differently. The staff has identified the following scenarios for analysis:

- **Interruption of specifically identified communication service that is used in an unlawful enterprise.** For example: the termination of a telephone number used in an illegal bookmaking operation.
- **Interruption of area communications to protect public safety, in circumstances that are not directly related to free expression and assembly rights.** For example, the suspension of cell phone service in an area where a cell-triggered bomb has been planted.
- **Interruption of area communications to protect public safety, in circumstances that are directly related to free expression and assembly rights.** For example, the suspension of cell phone service to impede a demonstration that is expected to turn violent.

- **Interruption of communications of persons subject to governmental control.** For example, restriction of cell phone use in prisons.

The remainder of this memorandum discusses the first of the scenarios listed above. The remaining scenarios will be discussed in future memoranda. **The staff invites input on whether there are any other scenarios that need to be considered.**

SPECIFICALLY IDENTIFIABLE COMMUNICATIONS USED IN UNLAWFUL ENTERPRISE

In some cases, government will have good reason to believe that a person is using a specific communication service to carry out an unlawful enterprise. For example, a person might be using a particular telephone number to conduct illegal bookmaking activities. In this situation, government may seek to terminate the communication service as a means of abating the unlawful activity. This could be done before, after, or in lieu of a criminal prosecution.

The California Supreme Court has considered this scenario more than once and has given very clear guidance. There are also existing statutes that authorize and regulate government termination of unlawful communications in specific situations. That background law is discussed below.

Sokol v. Public Utilities Commission

In 1948, the California Public Utilities Commission (“CPUC”) adopted a rule that required a communications utility to summarily terminate a customer’s service if the utility had reasonable cause to believe that the communication service was being used to violate the law. A written assertion by law enforcement was sufficient to establish reasonable cause:

[A]ny communications utility ... must discontinue and disconnect service to a subscriber, whenever it has reasonable cause to believe that the use made or to be made of the service, or the furnishing of service ... is prohibited under any law, ordinance, regulation, or other legal requirement, or is being or is to be used as an instrumentality, directly or indirectly, to violate or to aid and abet the violation of the law. A written notice to such utility from any official charged with the enforcement of the law stating that such service is being used or will be used as an instrumentality to violate or to aid and abet the violation of the law is sufficient to constitute such reasonable cause. ...¹⁶

16. 47 Cal. P.U.C. 853, 859-860 (1959).

A person affected by such termination could file a complaint with the CPUC, but had no other remedy:

[Any] person aggrieved . . . shall have the right to file a complaint with this Commission in accordance with law. This remedy shall be exclusive. Except as specifically provided herein, no action at law or in equity shall accrue against any communications utility because, or as a result of, any matter or thing done . . . pursuant to the provisions of this decision.¹⁷

In 1961, police delivered written notice to a telephone service provider, asserting that a particular club was using its telephone numbers to conduct illegal bookmaking. Citing the CPUC rule discussed above, police requested that the club's telephone service be terminated. Service was terminated two days later. The club filed a complaint with the CPUC and sought restoration of its service. The CPUC ordered interim relief (temporarily restoring telephone service to the club), pending adjudication of the complaint. A hearing was held and the CPUC found insufficient evidence that the club had used its telephones for an illegal purpose. It made its interim relief permanent. The club then filed an action for damages against the telephone service provider. That lawsuit eventually reached the California Supreme Court, in *Sokol v. Public Utilities Commission*.¹⁸

The Court held that the CPUC's rule was unconstitutional, because it deprived the club of property without due process of law:

first because they did not provide him with an opportunity to challenge the allegations of the police department until after his telephones had been removed and his business had been destroyed, and second, because the decision denies him any action against the telephone company for the wrongful discontinuance of service.¹⁹

The court also recognized that the termination of telephone service could violate a person's right of free expression:

It is also significant that the disconnection of telephones not only may deprive the subscriber of the monetary value of his economic venture, but in such circumstances denies him an essential means of communication for which there is no effective substitute. Hence, this restraint upon communication by the

17. *Id.*

18. 65 Cal. 2d 247 (1966).

19. *Id.* at 252.

subscriber also affects his right of free speech as guaranteed by the *First Amendment of the federal Constitution*. “Inasmuch as the rights of free speech and press are worthless without an effective means of expression, the guarantee extends both to the content of the communication and the means employed for its dissemination.”²⁰

However, the Court went on to provide guidance on how CPUC could refashion its rule, so as not to offend the Constitution:

[W]hatever new procedure is hereafter devised must at a minimum require that the police obtain prior authorization to secure the termination of service by satisfying an impartial tribunal that they have probable cause to act, in a manner reasonably comparable to a proceeding before a magistrate to obtain a search warrant. In addition, after service is terminated the subscriber must be promptly afforded the opportunity to challenge the allegations of the police and to secure restoration of the service. A procedure incorporating these measures would provide substantial protection to the subscriber without hindering the enforcement of gambling laws.²¹

Finally, the Court held that it was proper to immunize a communication service provider from civil liability for its action pursuant to the CPUC rule. It would be unfair and against public policy to expose a communication service provider to liability for providing legally-required assistance to law enforcement.²²

Goldin v. Public Utilities Commission

The CPUC promptly modified the rule that had been struck down in *Sokol*. Under the new rule, known as “Rule 31,” a communications utility is only required to terminate a customer’s service if law enforcement presents a written request that has been *signed by a magistrate*, and that is based on a finding of *probable cause* that the communication service is being used (or will be used) to violate the law.²³ The customer then has the right to immediately file a complaint and a request for interim relief pending adjudication of the complaint.²⁴

In *Goldin v. Public Utilities Commission*,²⁵ the Court upheld Rule 31 as applied, but expressed some minor reservations, which are discussed below.

20. *Id.* at 255 (citations omitted).

21. *Id.* at 256.

22. *Id.* at 256-58.

23. *Goldin v. Public Utilities Commission*, 23 Cal. 3d 638, 646 (1979).

24. *Id.*

25. *Id.*

Goldin involved an allegation that telephones were being used to operate an outcall prostitution service. Police wrote the telephone service provider requesting that specific telephone numbers be terminated. As required by Rule 31, the request was signed by a magistrate and based on a finding of probable cause. The telephone service was suspended and the operator of the call center filed a complaint with the CPUC. He disputed that the phones had been used for illegal activity, challenged the constitutionality of Rule 31, and requested interim relief. The CPUC granted interim relief “to prevent any undue business hardship pending our final determination.”²⁶

After hearing the complaint, the CPUC decided that Rule 31 was consistent with *Sokol* and the requirements of the Constitution; that Rule 31 had been followed; and that the complainant’s telephones had been used to violate the law. It lifted the interim relief and ordered that the telephone service be terminated. It also ordered the communication utility to refuse new service to the complainant and to any entity in which he has financial or managerial control.²⁷ The California Supreme Court affirmed the CPUC’s decision.

In discussing the constitutionality of Rule 31, the Court first considered whether the rule would violate due process rights. The Court expressed “no doubt” that commercial telephone service is an interest in property that is entitled to protection from taking without due process of law.²⁸ It then considered the level of process that is due when terminating commercial telephone service.

We start with the basic proposition that in every case involving a deprivation of property within the purview of the due process clause, the Constitution requires some form of notice and hearing. ... *Absent extraordinary circumstances justifying resort to summary procedures, this hearing must take place before an individual is deprived of a significant property interest.*²⁹

The Court then discussed the circumstances in which summary procedures have been found to be justified:

In the case of *Fuentes v. Shevin* (1972) 407 U.S. 67 [32 L.Ed.2d 556, 92 S.Ct. 1983], the United States Supreme Court outlined those kinds of circumstances which would be considered sufficiently

26. *Id.* at 648.

27. *Id.* at 649.

28. *Id.* at 662.

29. *Id.* (emphasis in original).

“extraordinary” to justify the postponement of a hearing. “Only in a few limited situations has this Court allowed outright seizure ... without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. Thus, the Court has allowed summary seizure of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure, and to protect the public from misbranded drugs and contaminated food.”³⁰

In discussing those standards, the Court observed:

Surely it cannot be said that the actual or threatened use of telephone facilities to violate or assist in the violation of *any* law would constitute the type of emergency situation justifying summary action. There is, in short, a great deal of difference from the point of view [of] need for immediate action between the use of telephones to plan, for example, a series of bombings and their use to plan a single petty theft — or indeed a breach of contract. Although we recognize that the rule has been uniformly interpreted to apply only in cases of actual or threatened *criminal* conduct, we believe that those portions thereof dealing with the use of summary discontinuance of service prior to hearing fail to comport with the requirements for summary “seizure” set forth in *Fuentes*. In order to so comport, the rule should provide at the least that in order to justify summary action the magistrate must find that there is probable cause to believe not only that the subject telephone facilities have been or are to be used in the commission or facilitation of illegal acts, but that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to public health, safety, or welfare will result.³¹

Applying that standard to the facts before it, the Court found that termination of telephone service used to operate a prostitution ring was “‘directly necessary’ to the furtherance of an important public interest” and that there was a “demonstrable need for prompt and immediate action.”³² The Court further concluded that the ongoing use of the telephones to solicit prostitution posed a

30. *Id.* at 663.

31. *Id.* at 664 (emphasis in original).

32. *Id.* at 663

significant danger to public health, safety, and welfare.³³ Thus, it was constitutionally permissible to terminate service without prior notice and an opportunity to be heard.

In reaching that conclusion, the Court seems to have been influenced by the practical concern that giving notice before service is terminated would allow wrongdoers to avoid the effect of termination:

Prompt and immediate action without prior notice or warning was required: absent such action, the subscriber might well have utilized the period between notification and actual termination to arrange for other service and inform established customers who called during the interim period of the changed number or numbers.³⁴

In fact, Rule 31 provides long-term protection against that sort of workaround, by allowing CPUC to order a permanent ban on all *future* service to a customer whose service has been terminated pursuant to the rule:

We also note that the rule here was interpreted by the Commission to permit its final order of termination to contain a provision that future business service was to be refused pending further order. ... This interpretation was in our view correct, for any other interpretation would have the effect of rendering an order of the Commission refusing restoration of service wholly ineffective, in that it could be quickly avoided by the simple expedient of applying for new service.³⁵

However, recognizing that summary termination of commercial communications could have serious economic effects, the Court held that a customer whose communications have been terminated must be given an “early opportunity to put [concerned law enforcement agencies] to [their] proof.” Thus, “to insure full compliance with applicable constitutional guarantees,” the CPUC rule authorizing summary termination of communications “must contain explicit provisions requiring an early hearing — especially in circumstances in which interim relief is requested.”³⁶

The Court also considered whether CPUC Rule 31 would violate a customer’s First Amendment rights. The Court first conceded that the right of free speech can also protect the *means* by which a person speaks:

33. *Id.* at 666.

34. *Id.* at 663-64.

35. *Id.* at 665, n.15.

36. *Id.* at 665.

Inasmuch as the rights of free speech and press are worthless without an effective means of expression, the guarantee extends both to the content of the communication and the means employed for its dissemination.³⁷

However, speech in service of illegal activity is not protected under the First Amendment:

Thus we believe that telephone communication which does “no more than propose a commercial transaction” can be, as we suggested in *Sokol*, protected “commercial speech.” By the same token, however, when such communication proposes, discusses, or is intended to encourage or facilitate a commercial transaction *which is itself illegal*, the principle established in the *Pittsburgh Press* case is applicable. Thus: “Any First Amendment interest which might be served by [telephone communications concerning] an ordinary commercial proposal and which might arguably outweigh the governmental interest supporting the regulation *is altogether absent* when the commercial activity itself is illegal and the restriction on [telephone communication] is incidental to a valid limitation on economic activity.” (413 U.S. at p. 389 [37 L.Ed.2d at p. 679]; italics added.) In short, telephone communication of the character herein involved is not protected speech within the meaning of the First Amendment. Thus, it is subject to total suppression by means of an otherwise valid limitation.³⁸

Of course, an allegation that a communication service is being used to facilitate an unlawful enterprise may not be factually correct. In that case, the termination of the communication service could affect constitutionally-protected speech. Despite that possibility, the Court held that the procedures it outlined were sufficient to protect an affected customer’s constitutional rights.

Narrowly-Tailored Remedy

In the scenario discussed in this memorandum, government is seeking to terminate specifically identified communication services that are being provided to specific customers. Assuming the allegations of wrongdoing are correct, there would be no effect on the communications of innocent third parties.

Because there would be no spillover effects on innocent third parties, the scenario discussed here does not involve the kind of broad suppression of free speech rights that could result from interruption of all communications in a geographical area (e.g., the interruption of cell communications within BART

37. *Id.* at 654, quoting *Sokol*, 65 Cal. 2d at 255.

38. *Id.* at 657 (emphasis in original).

stations in anticipation of an unlawful assembly). Nor would there be unintended harms resulting from blanket suppression of communications (e.g., the inability of people in the area to call 911 in an emergency). Those problematic spillover effects will be examined in a future memorandum, in the discussion of area interruption of communications.

Urgency

The facts at issue in *Goldin* involved sufficient urgency to justify summary termination of communication service, without prior notice to the affected customer. Such urgency seems to be based on two considerations: (1) the risk that pre-termination notice would allow wrongdoers to evade law enforcement's efforts to abate the unlawful conduct, and (2) the inherent threat to public health, safety, and welfare posed by certain unlawful enterprises.

Although *Goldin* addresses just one particular degree of urgency, there are two other scenarios that should be considered.

In some cases, there will be a need to *immediately* interrupt a communication service, in order to avoid an imminent threat of danger. For example, in a hostage situation it may be necessary to disconnect the communication services available to the hostage-taker, to better manage the negotiation process.³⁹ There may not be time to obtain the approval of a magistrate before doing so.

Conversely, there may be situations in which the immediate threat to public health, safety, and welfare is so low that there is no justification for summary proceedings. Time is simply not of the essence. In this situation, there would seem to be no good justification for setting aside the basic due process requirements of notice and an opportunity to be heard *before* property is seized. For example, if the Contractors State License Board believes that a person is advertising contracting services without being a licensed contractor, it may seek to terminate the telephone number listed in the advertisement.⁴⁰ While it is undoubtedly important to abate such misconduct, the need to do so may not be urgent enough to justify summary action.

These varying degrees of urgency are discussed further below.

39. See, e.g., Pub. Util. Code § 7907; Exhibit p. 7.

40. See, e.g., Bus. & Prof. Code § 7099.10; Exhibit p. 1.

Public Utilities Code Section 7908. Termination of Telephone Service Used in Unlawful Act

Public Utilities Code Section 7908 limits and regulates the authority of state and local government agencies to interrupt a communication service that is being used for an illegal purpose.⁴¹ The section was enacted in 2013.⁴² It will be repealed by its own terms on January 1, 2020 (unless the repeal provision is extended or deleted before that date).⁴³

Section 7908 generally prohibits government interruption of communications to protect public safety or prevent the use of the communication service for an illegal purpose, unless the government complies with specified procedural requirements.⁴⁴ With a few significant deviations, which will be discussed below, the specified procedure tracks the requirements expressed in *Goldin*.⁴⁵

Specific aspects of Section 7908 are discussed below.

Definition of “Communication Service”

Section 7908 applies to the interruption of a “communication service,” which it defines as follows:

“Communications service” means any communications service that interconnects with the public switched telephone network and is required by the Federal Communications Commission to provide customers with 911 access to emergency services.⁴⁶

That definition could perhaps be broadened. There are many kinds of communication services that are not required to provide 911 service.⁴⁷ Moreover, the staff is unsure of the extent to which modern Internet-based communications “interconnect” with the public switched telephone network.

The definition of “communication services” may have been intended to match the jurisdiction of the CPUC, which might have seemed appropriate given the location of Section 7908 in the Public Utilities Code. However, the staff sees no obvious reason for such a limitation. Section 7908 has no operational connection to any power or duty of the CPUC.

41. See Exhibit p. 7.

42. 2013 Cal. Stat. ch. 371.

43. Pub. Util. Code § 7908(h).

44. Pub. Util. Code § 7908(b)(1).

45. Pub. Util. Code § 7908(h).

46. Pub. Util. Code § 7908(a)(1).

47. For example, Skype does not provide 911 service. See <https://support.skype.com/en/faq/FA29/can-i-call-an-emergency-number-from-skype>.

The Commission should consider generalizing Section 7908 so that it protects all forms of electronic communication. If such a change were made, it might also make sense to relocate the provision, perhaps to the Government Code. **The staff requests public input on these issues.** In addition, the staff will provide a copy of this memorandum to the CPUC and ask for their input on the matter.

Substantive Scope

A central substantive provision of Section 7908 reads as follows:

Unless authorized pursuant to subdivision (c), no governmental entity and no provider of communications service, acting at the request of a governmental entity, shall interrupt communications service *for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose*, except pursuant to an order signed by a judicial officer obtained prior to the interruption.⁴⁸

That italicized language could be read as limiting the scope of Section 7908, making it inapplicable to government interruption of communication services for any purpose other than those referenced in that language.

This would seem to leave a significant gap in the law. In order to provide comprehensive guidance to government and communication service providers, **the Commission should consider expanding Section 7908 (or other appropriate statutory law) so that it somehow addresses every government interruption of communication services, regardless of the government's purpose.** In evaluating that possibility, the Commission will need to consider whether there are other legitimate reasons for government to interrupt communications (beyond those identified in existing statutes). **The staff invites public comment on that issue.**

Degree of Urgency

Section 7908 addresses two degrees of urgency:

- Circumstances that justify the interruption of service without prior notice to the customer (i.e., “[A]bsent immediate and summary action to interrupt communications service, serious, direct, and immediate danger to public safety, health, or welfare will result.”).⁴⁹

48. Pub. Util. Code § 7908(b)(1) (emphasis added). Subdivision (c) establishes an expedited procedure for extreme emergencies.

49. Pub. Util. Code § 7908(b)(1)(B).

- An “extreme emergency,” in which action without prior court authorization is permitted.⁵⁰

The statute does not permit the interruption of communications in less urgent situations. That may be by design. The Legislature may have concluded that interruption of communications should only be permitted in urgent circumstances. But that limitation might have been an oversight.

Goldin does not hold that interruption of communications would be unconstitutional in less-than-urgent circumstances. The degree of urgency that is described in *Goldin* is the standard that must be met in order to justify summary action. *Goldin* seems to leave open the possibility that communications could be interrupted in less-pressing circumstances, with notice to the customer and an opportunity for an adversarial hearing *before* the interruption occurs.

That is the approach taken in two sections of the Business and Professions Code, discussed later in this memorandum, which provide for the termination of telephone service if the telephone number was used in an advertisement for services that violate professional licensure requirements.⁵¹ Neither of those sections require any showing of urgency. Both provide an opportunity for an adversarial hearing before communication services are terminated.

The staff invites input on whether the law should generally permit the interruption of communication services used to violate the law, in non-urgent circumstances, following notice to the customer and an opportunity for an adversarial hearing on the merits of the allegations offered to support the interruption of service.

The staff also notes a possible technical problem in the drafting of the provision setting out the standard for summary action. Under Section 7908(b)(1)(B), a magistrate must find:

That absent immediate and summary action to interrupt communications service, serious, direct, and immediate danger to public safety, health, or welfare will result.

That appears to be a stricter standard than was required by *Goldin*, in which the Court held:

50. Pub. Util. Code § 7908(c) (“If a governmental entity reasonably determines that an extreme emergency situation exists that involves immediate danger of death or great bodily injury and there is insufficient time, with due diligence, to first obtain a court order, then the governmental entity may interrupt communications service without first obtaining a court order as required by this section....”).

51. Bus. & Prof. Code §§ 149, 7099.10.

[T]o justify summary action the magistrate must find that there is *probable cause* to believe not only that the subject telephone facilities have been or are to be used in the commission or facilitation of illegal acts, but that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to public health, safety, or welfare will result.⁵²

In other words, under *Goldin*, the magistrate need not be *certain* that summary action is required to prevent the specified dangers. Probable cause is all that is necessary.

It is not clear whether the deviation from *Goldin* was an intentional policy choice or inadvertent. The committee analyses don't address that point. **The staff invites public comment on the issue.**

Post-Termination Hearing

In *Goldin*, the Court was very clear in stating that due process requires a prompt opportunity to appeal a summary termination of communication services, in order to challenge the government's justification:

We also note that rule 31, while it provides for a hearing (and the opportunity to apply for interim relief) before the Commission following summary discontinuance of service upon the filing of a complaint by the subscriber, makes no explicit provision relative to the timing of that hearing. We expressly indicated in our *Sokol* decision that a valid termination procedure must include a *prompt* opportunity for the subscriber "to challenge the allegations of the police and to secure restoration of the service." (65 Cal.2d at p. 256.) We reaffirm this requirement. Especially in circumstances involving business telephones, where discontinuance of service can have serious economic effects upon the subscriber — it is important the subscriber have an "early opportunity to put [concerned law enforcement agencies] to [their] proof." (*Mitchell v. W. T. Grant Co.*, *supra*, 416 U.S. 600, 609 [40 L.Ed.2d 406, 415].) ... Accordingly we continue to be of the view that the rule, if it is to insure full compliance with applicable constitutional guarantees, must contain explicit provisions requiring an early hearing — especially in circumstances in which interim relief is requested.⁵³

Despite that, Section 7908 does not provide an affected customer with any opportunity for a post-termination adversarial hearing. This means that a customer can be deprived of a potentially critical economic resource, solely on the basis of an *ex parte* hearing of government allegations.

52. *Goldin*, 23 Cal. 3d at 664 (emphasis added).

53. *Goldin*, 23 Cal. 3d at 665 (emphasis in original).

The omission of an opportunity for post-termination adversarial review of an interruption order would perhaps be justified if Section 7908 could only be used to effect a *brief* interruption of communications (e.g., the three-hour interruption imposed by BART). If that were so, then a hearing might be unnecessary, because service would necessarily be restored before the hearing could be conducted.

However, there is nothing in Section 7908 that expressly limits government to brief interruptions. Nor could the staff find any legislative history suggesting that Section 7908 was intended to be limited to brief interruptions.⁵⁴ Recall that the communication interruption affirmed in *Goldin* was *permanent*. That interruption was based on facts that would seem to fit squarely within the scope of Section 7908.

The failure of Section 7908 to provide an opportunity for a post-termination adversarial hearing, in cases where the interruption of communications is lengthy, would seem to violate constitutional due process rights. **The staff recommends that the law be revised to remedy that problem. Public comment on the issue is invited.**

Emergencies

Section 7908 authorizes the interruption of communications without prior judicial authorization in cases of “extreme emergency.” An agency acting under that authorization must follow specified procedures, including applying for a court order after the fact, within a specified timeframe.⁵⁵

Legislative history suggests that the emergency procedure was the product of political compromise. **The staff sees no legal problems with the procedure and recommends against making any changes to it at this time.**

Service of Legal Process

After a government entity has obtained a court order authorizing interruption of communications (or prepares a statement of intent to obtain a court order, when acting under the expedited procedure for extreme emergencies), that legal process must be served on an appropriate entity. Under Section 7908, process must be served on one of two different entities, depending on the circumstances of the interruption:

54. See Senate Energy, Utilities, and Communications Committee Analysis of SB 380 (April 1, 2013); Senate Committee on Judiciary Analysis of SB 380 (April 23, 2013); Assembly Committee on Judiciary Analysis of SB 380 (July 2, 2013).

55. Pub. Util. Code § 7908(c).

An order to interrupt communications service, or a signed statement of intent provided pursuant to subdivision (c), that falls within the federal Emergency Wireless Protocol shall be served on the California Emergency Management Agency. All other orders to interrupt communications service or statements of intent shall be served on the communications service provider's contact for receiving requests from law enforcement, including receipt of and responding to state or federal warrants, orders, or subpoenas.⁵⁶

As can be seen, the operation of the service rule depends on whether an interruption "falls within the federal Emergency Wireless Protocol" (hereafter "EWP"). When would an interruption fall within the scope of the EWP? *There is no clear answer.*

The EWP (also known as "Standard Operating Procedure 303") is a secret policy promulgated by the President's National Security Telecommunications Advisory Committee. The only official information about the EWP that the staff has found is a very general summary of its history, purpose, and effect.⁵⁷

Apparently, the EWP was developed in response to an incident in 2005, in which the federal government shut down cellular phone service in a number of major transit tunnels in New York City, based on suspicion that bombings might be imminent.

Though the decision was rooted in vital security concerns, the resulting situation, undertaken without prior notice to wireless carriers or the public, created disorder for both Government and the private sector at a time when use of the communications infrastructure was most needed. Shortly following these activities, the National Coordinating Center (NCC) hosted a teleconference to discuss the need to develop a process for determining if and when cellular shutdown activities should be undertaken in the future in light of the serious impact these efforts could have had, not only on access by the public to emergency communications services during these situations, but also on public trust in the communications infrastructure in general.⁵⁸

A task force was created, "to formulate, on an expedited basis, recommendations to effect efficient coordinated action between industry and Government in times of national emergency."⁵⁹

56. Pub. Util. Code § 7908(d).

57. See Exhibit p. 11.

58. *Id.*

59. *Id.*

The task force recommended that the federal government do both of the following:

- Work to implement a simple process, building upon existing processes, with the Department of Homeland Security (DHS) and National Communications System (NCS) coordination enabling the Government to speak with one voice, provide decision makers with relevant information, and provide wireless carriers with Government-authenticated decisions for implementation; and
- Achieve rapid implementation through the Homeland Security Advisor of each State, in conjunction with the NCS and the Office of State and Local Government Coordination, DHS.⁶⁰

The following action was taken on the basis of those recommendations:

[T]he NCS approved Standard Operating Procedure (SOP) 303, “Emergency Wireless Protocols,” on March 9, 2006, codifying a shutdown and restoration process for use by commercial and private wireless networks during national crises. Under the process, the NCC will function as the focal point for coordinating any actions leading up to and following the termination of private wireless network connections, both within a localized area, such as a tunnel or bridge, and within an entire metropolitan area. The decision to shutdown service will be made by State Homeland Security Advisors, their designees, or representatives of the DHS Homeland Security Operations Center. Once the request has been made by these entities, the NCC will operate as an authenticating body, notifying the carriers in the affected area of the decision. The NCC will also ask the requestor a series of questions to determine if the shutdown is a necessary action. After making the determination that the shutdown is no longer required, the NCC will initiate a similar process to reestablish service. The NCS continues to work with the Office of State and Local Government Coordination at DHS, and the Homeland Security Advisor for each State to initiate the rapid implementation of these procedures.⁶¹

The precise details of the EWP are secret. Efforts by the Electronic Privacy Information Center to obtain more information about the EWP under the Freedom of Information Act have been unsuccessful.⁶² However, there are some points that can be gleaned from the available materials.

- (1) **Area interruption of wireless communications.** It is likely that the EWP only addresses an area interruption of wireless service. Such

60. *Id.*

61. See Exhibit p. 11.

62. Elec. Privacy Info. Ctr. v. United States Dep’t of Homeland Sec., 777 F.3d 518 (D.C. Cir. 2015).

an interruption was the impetus for development of the EWP and the official summary describes the EWP as providing a process for the “termination of private wireless network connections, both within a localized area, such as a tunnel or bridge, and within an entire metropolitan area.” Consequently, the EWP process would not seem to have any application to the interruption of specific services (as distinguished from area interruption) or non-wireless services (such as a landline).

- (2) **National Emergency.** It appears that the EWP is only intended to address interruption of communications in connection with a “national emergency.” For that reason, the EWP is probably inapplicable to nonemergency law enforcement matters. The EWP may also be inapplicable to state or local emergencies that do not rise to the level of national emergencies. The latter distinction may not always be easy to discern.
- (3) **Consolidated federal control.** The purpose of the EWP seems to be to consolidate control within the federal government, so that wireless service providers need only take direction from a single, authenticated source. That purpose is consistent with the requirement of Section 7908 that all requests falling within the scope of the EWP be directed to the Governor’s Office of Emergency Services (“OES”).⁶³

If the staff is correct that the EWP is not intended to apply to the interruption of *individual* communication services (as distinguished from the indiscriminate interruption of all wireless communications within a geographical area), then it would have no application to the scenario discussed in this memorandum. *However, the operation of the EWP will need to be carefully considered when the Commission analyzes area interruptions, in a future memorandum.*

In the meantime, the staff has contacted OES, to inform them of our study and invite their participation. While OES may not be at liberty to share the details of the EWP, it might be able to provide some useful guidance.

Hostage Situation

Public Utilities Code Section 7907 authorizes law enforcement to interrupt communications in a hostage situation or in a case of barricaded resistance to arrest:

[W]henever the supervising law enforcement official having jurisdiction has probable cause to believe that a person is holding

63. The reference, in Section 7908(d), to the California Emergency Management Agency appears to be obsolete. That agency appears to have been dissolved, with its functions assigned to the Office of Emergency Services. See Gov’t Code § 8585. That obsolete reference should be corrected.

hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, such official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by such suspected person with any person other than a peace officer or a person authorized by the peace officer.⁶⁴

By its terms, that section only authorizes the disconnection of telephone lines. It does not address cell phones or any form of Internet communication.

The staff sees no policy reason why the exigency that justifies cutting telephone lines in a hostage situation should not also extend to other kinds of communications. For example, if a hostage-taker's cell phone number is known, interrupting the use of the cell phone would seem to serve the same purpose as cutting a landline. Similarly, if a hostage-taker has access to the Internet (by means other than a telephone line), it would seem to make sense to cut that channel of communication as well.

The Commission should consider whether Section 7907 should be generalized, to encompass the interruption of *any* type of communication in a hostage situation.

Relationship Between Sections 7908 and 7907

As discussed, Public Utilities Code Section 7908 prescribes a procedure that government must follow before interrupting some types of communications. However, Section 7908 contains an express exemption for the disconnection of communications pursuant to Section 7907 (i.e., in a hostage or barricaded resistance situation).⁶⁵ Thus, when acting under Section 7907, the requirements of Section 7908 are generally inapplicable.

However, there is a limitation on the exemption provided in Section 7908. That exemption does not apply to an area disconnection of wireless communications.⁶⁶ In other words, Section 7908 *does* apply if law enforcement relies on Section 7907 to broadly interrupt cell phone service in the area surrounding a hostage situation.

That limitation on the exemption from Section 7908 seems odd, because it is not clear that Section 7907 authorizes the interruption of wireless communications. By its terms, the section only authorizes the cutting of

64. See Exhibit p. 7.

65. Pub. Util. Code § 7908(a)(3)(C).

66. *Id.*

telephone “lines.” Thus, it is not clear that the special limitation discussed above would ever have any application.

That mismatch would be eliminated if Section 7907 were broadened to apply to all forms of electronic communication, as proposed above. But if such a change is not made, then it would probably make sense to address the apparent mismatch, in order to clarify the relationship between Sections 7908 and 7907.

Kill Switch

Business and Professions Code Section 22761, enacted in 2014,⁶⁷ requires cell phones sold in California on or after July 1, 2015, to possess a “technological solution” that enable the phone’s owner to disable it remotely (colloquially known as a “kill switch”).

Section 22761(e) provides that any government request to disable a phone by means of its kill switch is subject to Public Utilities Code Section 7908. **That rule does not pose any obvious problems.**

Unlawful Use of Autodialing Device

Public Utilities Code Section 2872 prohibits the use of an autodialing device in certain situations. One remedy for a violation of Section 2872 is the disconnection of the associated telephone service.⁶⁸ Because that disconnection is a remedy for a violation of the law, it could only be imposed after an adjudicative proceeding. Consequently, there should not be any concerns about due process. The affected customer would have had notice and an opportunity to be heard. **The staff has no concerns about Section 2876.**

Unlicensed Business Activity

There are a handful of code sections that authorize government to order the disconnection of a specific telephone number when that number is included in an advertisement for services by a person who is in violation of a governing licensure requirement. Those provisions are discussed below.

Business and Professions Code Sections 149 and 7099.10

Business and Professions Code Section 149 authorizes specified regulatory agencies within the Department of Consumer Affairs to issue a citation to a person, based on probable cause to believe that the person is advertising services

67. 2014 Cal. Stat. ch. 275.

68. Pub. Util. Code § 2876(b).

in violation of a licensure requirement within the agency’s jurisdiction.⁶⁹ The citation requires the violator to cease advertising and request that the telephone company disconnect service to any telephone number that was included in the advertisement.⁷⁰

The alleged violator has the right to an administrative hearing to contest the citation, which is stayed pending the resolution of that hearing.⁷¹

If the citation becomes final and the violator does not comply with the citation’s requirements, the enforcing agency shall refer the matter to CPUC. The CPUC is then required to order the telephone company to terminate service pursuant to the citation.⁷²

A telephone company that complies, in good faith, with the CPUC order to terminate service has a complete defense against any liability for the termination of service.⁷³

Business and Professions Code Section 7099.10 provides the same kind of authority, subject to a nearly identical procedure, to the Contractors State License Board (“CSLB”).⁷⁴ Technically, Section 7099.10 might be superfluous, because CSLB is one of the entities that is expressly authorized to take action pursuant to Section 149. However, there may have been good reason to separately reaffirm CSLB’s authority to take such action.

Notably, both sections provide for notice and an opportunity for an adversarial adjudication of the charges *before* telephone service is terminated. Because this does not involve summary action, there is no need for the kind of magistrate approval described in *Goldin*. Pre-seizure notice and an opportunity to be heard is the default due process requirement.

Section 7099.10 adds one slight refinement that seems to make sense. In addition to ordering the termination of the telephone number used to advertise unlicensed services, the CSLB citation also prohibits the telephone company from *forwarding* calls from the terminated number to any other number. **The Commission should consider whether to add a similar restriction to Section 149.**

69. See Exhibit p. 1.

70. Bus. & Prof. Code § 149(a).

71. Bus. & Prof. Code § 149(b).

72. Bus. & Prof. Code § 149(c).

73. Bus. & Prof. Code § 149(d).

74. See Exhibit p. 1.

Public Utilities Code Sections 5322 and 5371.6

Public Utilities Code Sections 5322 and 5371.6 are nearly identical.⁷⁵ Both authorize the CPUC to terminate service to a telephone number that is used as an instrumentality of the unlawful provision of a particular type of transportation service — unlicensed household goods carriers and charter-party carriers, respectively. Prior to termination of service, the CPUC must obtain an order signed by a magistrate that includes a finding of probable cause to believe that the telephone is being used as an instrumentality of the unlawful activity and that, absent immediate and summary action, a danger to public welfare or safety will result.⁷⁶ Both sections expressly state that their procedures were designed to comply with *Goldin*.⁷⁷

In fact, those sections go one step beyond what is required in *Goldin*. In addition to obtaining a magistrate's order based on probable cause, the CPUC must also demonstrate that "other available enforcement remedies of the commission have failed to terminate unlawful activities detrimental to the public welfare and safety."⁷⁸

On termination of service, the customer is provided notice⁷⁹ and has the right to file a complaint with the CPUC and request interim relief.⁸⁰ At the hearing, the CPUC has the burden of proving the charges and justifying the termination of service.⁸¹

Discussion

The staff sees two ways in which the provisions discussed above could be improved.

First, the provisions could be broadened to encompass all forms of electronic communications. If it is good policy to terminate a telephone number used to advertise unlawful business services, shouldn't the law also terminate an email or text-messaging address that is used to advertise such services? The same

75. See Exhibit pp. 2-4.

76. Pub. Util. Code §§ 5322(c); 5371.6(c).

77. Pub. Util. Code §§ 5322(b)(1); 5371.6(b)(1).

78. Pub. Util. Code §§ 5322(c); 5371.6(c).

79. Pub. Util. Code §§ 5322(f); 5371.6(f).

80. Pub. Util. Code §§ 5322(d); 5371.6(d).

81. Pub. Util. Code §§ 5322(e); 5371.6(d). Both provisions state that the CPUC has the "burden of providing" certain matters. This appears to be a typographical error, which should be corrected to "burden of proving."

would also seem to be true for a web page or any other communication service that might be used as a point of contact for unlicensed business activity.

Generalizing the provisions in that way might require some elaboration of the procedure to be used. Currently, all four of the provisions discussed above rely on the CPUC's authority to issue enforceable orders to telephone companies. If the provisions were broadened to apply to other types of communications, there might need to be some other enforcement mechanism.

Second, the Public Utilities Code provisions could perhaps be revised to follow the pre-seizure hearing process used in the Business and Professions Code. It is not clear that a magistrate would always agree that there is an immediate need to disconnect communications used to advertise unlicensed transportation services, without prior notice to the affected communication customer. The Department of Consumer Affairs manages to address very similar problems without summary action (even though DCA regulates professions that can have a clear and immediate effect on public health and safety, like doctors, pharmacists, and structural engineers). It seems that the CPUC would be on firmer ground if it were to provide prior notice and an opportunity to be heard before disconnecting the communication services of unlicensed household goods and charter party carriers. Such a process would almost certainly satisfy the requirements of due process, eliminating the possibility that a proposed summary action would be rejected by a magistrate for lack of sufficient urgency. Such a change in procedure would also reduce court workload, as CPUC could proceed administratively, without the involvement of a magistrate.

The Commission should consider whether to make one or both of those changes. Public input on the issues is requested. The staff will specifically invite comment from CPUC on these issues.

Federal Statutory Law

While the Commission obviously has no authority to recommend changes to federal statutory law, it is worth considering whether there are statutes that might preempt state law on the issues discussed in this memorandum.

Beyond the secret federal Emergency Wireless Protocol, which is discussed above and will be discussed again in future memoranda, the staff found one federal statute that directly addresses government interruption of a communication service that is used as part of an unlawful activity. Section 1084 of Title 18 provides as follows:

When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.⁸²

There are a few important points to note about that provision:

- (1) It authorizes action by state and local government entities. Thus, it falls within the scope of the current study.
- (2) It appears to require notice to an affected communication customer *before* service is interrupted (“*after* reasonable notice”).
- (3) It acknowledges that an affected customer has a right to be heard to challenge the interruption. The language of the section suggests that such a hearing could be held *after* the interruption occurs (“such facility ... should be *restored*”).

The staff did not find any appellate opinion on the extent to which Section 1084 might preempt state law. But the staff found one federal district court opinion holding that Section 1084 does not preempt state laws that provide for the interruption of communications used in furtherance of an illegal purpose.⁸³

Nonetheless, it is possible that the federal statute’s requirement of pre-interruption notice would be in conflict with a state statute that allows interruption of communication service without prior notice to the affected customer (e.g., Public Utilities Code Section 7908). **That may argue in favor of creating an exception to Section 7908 for action pursuant to Section 1084.**

The staff invites comment on whether there are any other federal statutes that authorize the interruption of communications used in an unlawful activity.

82. 18 U.S.C. § 1084(a).

83. *Delaware Sports Service v Diamond State Telephone Company*, 241 F. Supp. 847 (Del. 1965), *aff’d* 355 F.2d 929 (3d Cir. 1966), *cert. denied*, 385 U.S. 817 (1966).

CONCLUSION

The scenario described in this memorandum is relatively straightforward. It involves government disconnection of a specific communication service that is used in conducting unlawful activities. That narrowly prescribed effect greatly limits the legal and practical issues that are involved.

The main concern presented by the scenario is that the disconnection of communications could effect a taking of property without due process of law. That is the main issue discussed by the California Supreme Court in *Sokol* and *Goldin*. Those cases provide concrete guidance that is directly on point, prescribing the procedure that government must follow in order to conduct a summary interruption of a specific communication service that is used as an instrument of illegal activity. Those cases leave open the possibility that less process may be constitutional in truly exigent circumstances and that the default requirements of due process (notice and an opportunity to be heard *before* the seizure of property) would be required in cases where time is not of the essence.

The limited scenario discussed in this memorandum does not present a number of more difficult issues:

- The constitutionality of interrupting communications for the purpose of suppressing a public assembly that is, or is expected to be, unlawful.
- The effect of area interruption of wireless service on access to 911 and other forms of emergency communications.
- The extent to which area interruption of wireless service is consistent with the federal Emergency Wireless Protocol (Standard Operating Procedure 303).

Those issues will be discussed in future memoranda.

This memorandum notes a number of possible improvements to the statutes that are discussed above:

- **Amend Public Utilities Code Section 7908 to broaden the definition of “communication service.”** This would expand the scope of the section’s protections to apply to all forms of modern electronic communications.
- **Amend Public Utilities Code Section 7908 to apply to government interruptions that are made for purposes other than those specified in the section.** This would fill an existing gap in the law, providing guidance to communication service providers and protection to customers in any situation where government

seeks to interrupt communications, regardless of the government's purpose.

- **Allow government to interrupt communications used for an unlawful purpose in cases where time is not of the essence.** When taking such action, the customer would receive notice and an opportunity to be heard *before* the communication service is interrupted.
- **Amend Public Utilities Code Section 7908(b)(1)(B) to provide that the specified determination need only be based on probable cause, rather than certainty.** Such a change would only be appropriate if the statute's deviation from the requirements of *Goldin* was inadvertent.
- **Amend Public Utilities Code Section 7908 to provide an affected customer a prompt opportunity to challenge an interruption of communications.** *Goldin* held that an opportunity for a post-termination hearing is constitutionally required.
- **Amend Public Utilities Code Section 7908(c) to correct the obsolete reference to the California Emergency Management Agency.** The duties of that former agency have been assumed by the Governor's Office of Emergency Services.
- **Amend Public Utilities Code Section 7907 to apply to all forms of electronic communications.** There is no obvious reason why the interruption of communications in a hostage situation should be limited to landline telephones.
- **Amend Public Utilities Code Section 7908 to clarify its application to action under Public Utilities Code Section 7907.** This change will not be necessary if the scope of Section 7907 is broadened to include wireless communications.
- **Amend Business and Professions Code Section 149 to include a restriction on forwarding to a disconnected number.** This would parallel the rule in Business and Professions Code Section 7099.10.
- **Amend Business and Professions Code Sections 149 and 7099.10 and Public Utility Code Sections 5322 and 5371.6 to apply to all forms of electronic communications.** There is no obvious reason why the effect of these provisions should be limited to telephone services.
- **Amend Public Utility Code Sections 5322 and 5371.6 to follow the procedure provided in Business and Professions Code Sections 149 and 7099.10.** It is not clear that the degree of urgency involved in disconnecting advertised telephone numbers for unlicensed household goods carriers and charter party carriers is sufficient to justify summary action. Providing advance notice and an opportunity to be heard, before termination, would be a surer way to comply with the requirements of due process.
- **Amend Public Utilities Code Section 7908 to create an exception for action pursuant to 18 U.S.C. § 1084.** It might be prudent to

create a broader exception, for any applicable provision of federal law. That would avoid preemption with regard to a federal statute that the staff has not yet discovered (or that has not yet been enacted).

The staff invites public input on all of those reform ideas. The Commission will need to decide which of them to pursue further, if any.

Respectfully submitted,

Brian Hebert
Executive Director

Bus. & Prof. Code § 149. Unlicensed professional activity generally

149. (a) If, upon investigation, an agency designated in Section 101 has probable cause to believe that a person is advertising with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

Bus. & Prof. Code § 7099.10. Unlicensed contractor

7099.10. (a) If, upon investigation, the registrar has probable cause to believe that a licensee, an applicant for a license, or an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, has violated Section 7027.1 by advertising for construction or work of improvement covered by this chapter in an alphabetical or classified directory, without being properly licensed, the registrar may issue a citation under Section 7099 containing an order of correction which requires the violator to cease the unlawful advertising and to notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person.

(b) If the person to whom a citation is issued under subdivision (a) notifies the registrar that he or she intends to contest the citation, the registrar shall afford an

opportunity for a hearing, as specified in Section 7099.5, within 90 days after receiving the notification.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after the order is final, the registrar shall inform the Public Utilities Commission of the violation, and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

Pub. Util. Code § 2876. Automatic dialing announcement devices

2876. Any person violating this article is guilty of a civil offense and is subject to either or both of the following penalties:

(a) A fine of not to exceed five hundred dollars (\$500) for each violation, levied and enforced by the commission, on complaint or on its own motion, pursuant to Chapter 11 (commencing with Section 2100) of Part 1.

(b) Disconnection of telephone service to the automatic dialing-announcing device for a period of time which shall be specified by the commission.

Pub. Util. Code § 5322. Household goods carrier

5322. (a) The Legislature finds and declares that advertisement and use of telephone service are essential for household goods carriers to obtain business and conduct intrastate moving services. The unlawful advertisement by unpermitted household goods carriers has required properly permitted and regulated household goods carriers to compete with unpermitted household goods carriers using unfair business practices. Unpermitted household goods carriers have also exposed citizens of the State of California to unscrupulous persons who portray themselves as properly permitted, qualified, and insured household goods carriers. Many of these unpermitted household goods carriers have been found to have perpetrated acts of theft, fraud, and dishonesty upon unsuspecting citizens of the State of California.

(b) (1) The Legislature finds and declares that the termination of telephone service utilized by unpermitted household goods carriers is essential to ensure the public safety and welfare. Therefore, the commission should take enforcement action as specified in this section to disconnect telephone service of unpermitted household goods carriers who unlawfully advertise moving services in yellow page directories and other publications. The enforcement action provided for by this section is consistent with the decision of the Supreme Court of the State of California in *Goldin, et al. v. Public Utilities Commission et al.*, (1979) 23 Cal.3d 638.

(2) Notwithstanding Section 2891, for purposes of this section, a telephone utility, or a corporation that holds a controlling interest in the telephone utility, or any business that is a subsidiary or affiliate of the telephone utility, that has the name and address of the subscriber to a telephone number being used by an unpermitted household goods carrier shall provide the commission, or an authorized official of the commission, upon demand, and the order of a magistrate, access to this information. A magistrate may only issue an order, for the purposes of this subdivision, when the magistrate has made the findings required by subdivision (c).

(c) Any telephone utility operating under the jurisdiction of the commission shall refuse telephone service to a new customer and shall disconnect telephone service of an existing customer only after it is shown that other available enforcement remedies of the commission have failed to terminate unlawful activities detrimental to the public welfare and safety, and upon receipt from any authorized official of the commission of a writing, signed by a magistrate, as defined by Sections 807 and 808 of the Penal Code, finding that probable cause exists to believe that the customer is advertising or holding out to the public to perform, or is performing, household goods carrier services without having in force a permit issued by the commission authorizing those services, or that the telephone service otherwise is being used or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the laws requiring a household goods carrier permit. Included in the writing of the magistrate shall be a finding that there is probable cause to believe that the subject telephone facilities have been or are to be used in the commission or facilitation of holding out to the public to perform, or in performing, household goods carrier services without having in force a permit issued by the commission authorizing those services, and that, absent immediate and summary action, a danger to public welfare or safety will result.

(d) Any person aggrieved by any action taken pursuant to this section shall have the right to file a complaint with the commission and may include therein a request for interim relief. The commission shall schedule a public hearing on the complaint to be held within 21 calendar days of the filing and assignment of a docket number to the complaint. The remedy provided by this section shall be exclusive. No other action at law or in equity shall accrue against any telephone utility because of, or as a result of, any matter or thing done or threatened to be done pursuant to this section.

(e) At any hearing on complaint pursuant to subdivision (d), the commission staff shall have the right to participate, including the right to present evidence and argument and to present and cross-examine witnesses. The commission staff shall have both the burden of providing that the use made or to be made of the telephone service is to hold out to the public to perform, or to assist in performing, services as a household goods carrier, or that the telephone service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in

violation of the licensing laws as applicable to household goods carriers and that the character of the acts is such that, absent immediate and summary action, a danger to public welfare or safety will result, and the burden of persuading the commission that the telephone services should be refused or should not be restored.

(f) The telephone utility, immediately upon refusal or disconnection of service in accordance with subdivision (c), shall notify the customer or subscriber in writing that the refusal or disconnection of telephone service has been made pursuant to a request of the commission and the writing of a magistrate, and shall include with the notice a copy of this section, a copy of the writing of the magistrate, and a statement that the customer or subscriber may request information from the commission at its San Francisco or Los Angeles office concerning any provision of this section and the manner in which a complaint may be filed.

(g) Each contract for telephone service, by operation of law, shall be deemed to contain the provisions of this section. The provisions shall be deemed to be a part of any application for telephone service. Applicants and customers for telephone service shall be deemed to have consented to the provisions of this section as a consideration for the furnishing of the service.

(h) The terms “person,” “customer,” and “subscriber,” as used in this section, include a subscriber to telephone service, an applicant for that service, a corporation, a company, a partnership, an association, and an individual.

(i) The term “telephone utility,” as used in this section, includes a “telephone corporation” and a “telegraph corporation,” as defined in Division 1 (commencing with Section 201).

(j) The term “authorized official,” as used in this section, includes the Executive Director of the Public Utilities Commission or any commission employee designated pursuant to paragraph (5) of subdivision (a) of Section 830.11 of the Penal Code.

Pub. Util. Code § 5371.6. Unlicensed charter-party carriers of passengers

5376.1. (a) The Legislature finds and declares that advertising and use of telephone service is essential for charter-party carriers of passengers to obtain business and to conduct intrastate passenger transportation services. Unlawful advertisements by unlicensed charter-party carriers of passengers has resulted in properly licensed and regulated charter-party carriers of passengers competing with unlicensed charter-party carriers of passengers using unfair business practices. Unlicensed charter-party carriers of passengers have also exposed citizens of the state to unscrupulous persons who portray themselves as properly licensed, qualified, and insured charter-party carriers of passengers. Many of these unlicensed charter-party carriers of passengers have been found to have operated their vehicles without insurance or in an unsafe manner, placing the citizens of the state at risk.

(b) (1) The Legislature finds and declares that the termination of telephone service utilized by unlicensed charter-party carriers of passengers is essential to ensure the public safety and welfare. Therefore, the commission should take enforcement action as specified in this section to disconnect telephone service of unlicensed charter-party carriers of passengers who unlawfully advertise passenger transportation services in yellow page directories and other publications. The enforcement actions provided for by this section are consistent with the decision of the California Supreme Court in *Goldin v. Public Utilities Commission* (1979) 23 Cal. 3d 638.

(2) For purposes of this section, a telephone corporation or telegraph corporation, or a corporation that holds a controlling interest in the telephone or telegraph corporation, or any business that is a subsidiary or affiliate of the telephone or telegraph corporation, that has the name and address of the subscriber to a telephone number being used by an unlicensed charter-party carrier of passengers shall provide the commission, or an authorized officer or employee of the commission, upon demand, and the order of a magistrate, access to this information. A magistrate may only issue an order, for the purposes of this subdivision, if the magistrate has made the findings required by subdivision (c).

(c) A telephone or telegraph corporation shall refuse telephone service to a new subscriber and shall disconnect telephone service of an existing subscriber only after it is shown that other available enforcement remedies of the commission have failed to terminate unlawful activities detrimental to the public welfare and safety, and upon receipt from any authorized officer or employee of the commission of a writing, signed by a magistrate, as defined by Sections 807 and 808 of the Penal Code, finding that probable cause exists to believe that the subscriber is advertising or holding out to the public to perform, or is performing, charter-party carrier of passengers transportation services without having in force a permit or certificate issued by the commission authorizing those services, or that the telephone service otherwise is being used or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the laws requiring a charter-party carrier of passengers permit or certificate. Included in the writing of the magistrate shall be a finding that there is probable cause to believe that the subject telephone facilities have been or are to be used in the commission or facilitation of holding out to the public to perform, or in performing, charter-party carrier of passengers transportation services without having in force a permit or certificate issued by the commission authorizing those services, and that, absent immediate and summary action, a danger to public welfare or safety will result.

(d) Any person aggrieved by any action taken pursuant to this section shall have the right to file a complaint with the commission and may include therein a request for interim relief. The commission shall schedule a public hearing on the complaint to be held within 21 calendar days of the filing and assignment of a docket number to the complaint. The remedy provided by this section shall be exclusive. No other action at law or in equity shall accrue against any telephone or

telegraph corporation because of, or as a result of, any matter or thing done or threatened to be done pursuant to this section.

(e) At any hearing held on a complaint filed with the commission pursuant to subdivision (d), the commission staff shall have the right to participate, including the right to present evidence and argument and to present and cross-examine witnesses. The commission staff shall have both the burden of providing that the use made or to be made of the telephone service is to hold out to the public to perform, or to assist in performing, services as a charter-party carrier of passengers, or that the telephone service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the certification or permitting requirements applicable to charter-party carriers of passengers and that the character of the acts are such that, absent immediate and summary action, a danger to public welfare or safety will result, and the burden of persuading the commission that the telephone services should be refused or should not be restored.

(f) The telephone or telegraph corporation, immediately upon refusal or disconnection of service in accordance with subdivision (c), shall notify the subscriber in writing that the refusal or disconnection of telephone service has been made pursuant to a request of the commission and the writing of a magistrate, and shall include with the notice a copy of this section, a copy of the writing of the magistrate, and a statement that the customer or subscriber may request information from the commission at its San Francisco or Los Angeles office concerning any provision of this section and the manner in which a complaint may be filed.

(g) The provisions of this section are an implied term of every contract for telephone service. The provisions of this section are a part of any application for telephone service. Applicants for, and subscribers and customers of, telephone service have, as a matter of law, consented to the provisions of this section as a consideration for the furnishing of the telephone service.

(h) As used in this section, the terms “person,” “customer,” and “subscriber” include a subscriber to telephone service, any person using the telephone service of a subscriber, an applicant for telephone service, a corporation, as defined in Section 204, a “person” as defined in Section 205, a limited liability company, a partnership, an association, and includes their lessees and assigns.

(i) (1) As used in this section, “telephone corporation” means a “telephone corporation” as defined in Section 234.

(2) As used in this section, “telegraph corporation” means a “telegraph corporation” as defined in Section 236.

(j) As used in this section, “authorized officer or employee of the commission” includes the executive director of the commission or any commission employee designated pursuant to paragraph (5) of subdivision (a) of Section 830.11 of the Penal Code.

Pub. Util. Code § 7907. Hostage situation

7907. Notwithstanding Section 591, 631, or 632 of the Penal Code or Section 7906 of this code, whenever the supervising law enforcement official having jurisdiction has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, such official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by such suspected person with any person other than a peace officer or a person authorized by the peace officer.

The telephone corporation shall designate a person as its security employee and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section.

Good faith reliance on an order by a supervising law enforcement official shall constitute a complete defense to any action brought under this section.

Pub. Util. Code § 7908. Government interruption of telephone service

7908. (a) For purposes of this section, the following terms have the following meanings:

(1) “Communications service” means any communications service that interconnects with the public switched telephone network and is required by the Federal Communications Commission to provide customers with 911 access to emergency services.

(2) “Governmental entity” means every local government, including a city, county, city and county, a transit, joint powers, special, or other district, the state, and every agency, department, commission, board, bureau, or other political subdivision of the state, or any authorized agent thereof.

(3) (A) “Interrupt communications service” means to knowingly or intentionally suspend, disconnect, interrupt, or disrupt communications service to one or more particular customers or all customers in a geographical area.

(B) “Interrupt communications service” does not include any interruption of communications service pursuant to a customer service agreement, a contract, a tariff, a provider’s internal practices to protect the security of its networks, Section 2876, 5322, or 5371.6 of this code, Section 149 or 7099.10 of the Business and Professions Code, or Section 4575 or subdivision (d) of Section 4576 of the Penal Code.

(C) “Interrupt communications service” does not include any interruption of service pursuant to an order to cut, reroute, or divert service to a telephone line or wireless device used or available for use for communication by a person or persons in a hostage or barricade situation pursuant to Section 7907. However, “interruption of communications service” includes any interruption of service resulting from an order pursuant to Section 7907 that affects service to wireless

devices other than any wireless device used by, or available for use by, the person or persons involved in a hostage or barricade situation.

(4) “Judicial officer” means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities of any state or federal court located in this state.

(b) (1) Unless authorized pursuant to subdivision (c), no governmental entity and no provider of communications service, acting at the request of a governmental entity, shall interrupt communications service for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer obtained prior to the interruption. The order shall include all of the following findings:

(A) That probable cause exists that the service is being or will be used for an unlawful purpose or to assist in a violation of the law.

(B) That absent immediate and summary action to interrupt communications service, serious, direct, and immediate danger to public safety, health, or welfare will result.

(C) That the interruption of communications service is narrowly tailored to prevent unlawful infringement of speech that is protected by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution, or a violation of any other rights under federal or state law.

(2) The order shall clearly describe the specific communications service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected, shall be narrowly tailored to the specific circumstances under which the order is made, and shall not interfere with more communication than is necessary to achieve the purposes of the order.

(3) The order shall authorize an interruption of communications service only for as long as is reasonably necessary and shall require that the interruption cease once the danger that justified the interruption is abated and shall specify a process to immediately serve notice on the communications service provider to cease the interruption.

(c) (1) Communications service shall not be interrupted without first obtaining a court order except pursuant to this subdivision.

(2) If a governmental entity reasonably determines that an extreme emergency situation exists that involves immediate danger of death or great bodily injury and there is insufficient time, with due diligence, to first obtain a court order, then the governmental entity may interrupt communications service without first obtaining a court order as required by this section, provided that the interruption meets the grounds for issuance of a court order pursuant to subdivision (b) and that the governmental entity does all of the following:

(A) (i) Applies for a court order authorizing the interruption of communications service without delay, but within six hours after commencement of an interruption of communications service except as provided in clause (ii).

(ii) If it is not possible to apply for a court order within six hours due to an emergency, the governmental entity shall apply for a court order at the first reasonably available opportunity, but in no event later than 24 hours after commencement of an interruption of communications service. If an application is filed more than six hours after commencement of an interruption of communications service pursuant to this clause, the application shall include a declaration under penalty of perjury stating the reason or reasons that the application was not submitted within six hours after commencement of the interruption of communications service.

(B) Provides to the provider of communications service involved in the service interruption a statement of intent to apply for a court order signed by an authorized official of the governmental entity. The statement of intent shall clearly describe the extreme emergency circumstances and the specific communications service to be interrupted. If a governmental entity does not apply for a court order within 6 hours due to the emergency, then the governmental entity shall submit a copy of the signed statement of intent to the court within 6 hours.

(C) Provides conspicuous notice of the application for a court order authorizing the communications service interruption on its Internet Web site without delay, unless the circumstances that justify an interruption of communications service without first obtaining a court order justify not providing the notice.

(d) An order to interrupt communications service, or a signed statement of intent provided pursuant to subdivision (c), that falls within the federal Emergency Wireless Protocol shall be served on the California Emergency Management Agency. All other orders to interrupt communications service or statements of intent shall be served on the communications service provider's contact for receiving requests from law enforcement, including receipt of and responding to state or federal warrants, orders, or subpoenas.

(e) A provider of communications service that intentionally interrupts communications service pursuant to this section shall comply with any rule or notification requirement of the commission or Federal Communications Commission, or both, and any other applicable provision or requirement of state or federal law.

(f) Good faith reliance by a communications service provider upon an order of a judicial officer authorizing the interruption of communications service pursuant to subdivision (b), or upon a signed statement of intent to apply for a court order pursuant to subdivision (c), shall constitute a complete defense for any communications service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.

(g) The Legislature finds and declares that ensuring that California users of any communications service not have that service interrupted, and thereby be deprived of 911 access to emergency services or a means to engage in constitutionally protected expression, is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.

(h) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

Termination of Cellular Networks During Emergency Situations

Investigation Group / Period of Activity

Cellular Service Shutdown Ad Hoc Working Group

August 2005 – January 2006

Issue Background

As a direct result of the bombings that took place in the London transportation system in July 2005, U.S. authorities initiated the shut down of cellular network services in the Lincoln, Holland, Queens, and Brooklyn Battery Tunnels. The Federal Government based this precautionary measure on the suspicion that similar attacks might also be perpetrated in the tunnels leading to and from New York City. Though the decision was rooted in vital security concerns, the resulting situation, undertaken without prior notice to wireless carriers or the public, created disorder for both Government and the private sector at a time when use of the communications infrastructure was most needed. Shortly following these activities, the National Coordinating Center (NCC) hosted a teleconference to discuss the need to develop a process for determining if and when cellular shutdown activities should be undertaken in the future in light of the serious impact these efforts could have had, not only on access by the public to emergency communications services during these situations, but also on public trust in the communications infrastructure in general.

History of NSTAC Actions and Recommendations

These actions highlighted, within the President's National Security Telecommunications Advisory Committee (NSTAC) community, the need for a process to ensure that future similar decisions meet the Nation's security goals and ensure the protection of critical infrastructures. Consequently, on August 18, 2005, the NSTAC established a Principal level task force to formulate, on an expedited basis, recommendations to effect efficient coordinated action between industry and Government in times of national emergency.

To facilitate more coordinated action, the NSTAC recommended that the President direct his departments and agencies to:

- Work to implement a simple process, building upon existing processes, with the Department of Homeland Security (DHS) and National Communications System (NCS) coordination enabling the Government to speak with one voice, provide decision makers with relevant information, and provide wireless carriers with Government-authenticated decisions for implementation; and
- Achieve rapid implementation through the Homeland Security Advisor of each State, in conjunction with the NCS and the Office of State and Local Government Coordination, DHS.

The group concluded its activities upon NSTAC approval of the Letter and recommendations in January 2006.

Actions Resulting from NSTAC Recommendations

In support of the recommendations, the NCS approved Standard Operating Procedure (SOP) 303, "Emergency Wireless Protocols," on March 9, 2006, codifying a shutdown and restoration process for use by commercial and private wireless networks during national crises. Under the process, the NCC will function as the focal point for coordinating any actions leading up to and following the termination of private wireless network connections, both within a localized area, such as a tunnel or bridge, and within an entire metropolitan area. The decision to shutdown service will be made by State Homeland Security Advisors, their designees, or representatives of the DHS Homeland Security Operations Center. Once the request has been made by these entities, the NCC will operate as an authenticating body, notifying the carriers in the affected area of the decision. The NCC will also ask the requestor a series of questions to determine if the shutdown is a necessary action. After making the determination that the shutdown is no longer required, the NCC will initiate a similar process to reestablish service. The NCS continues to work with the Office of State and

Local Government Coordination at DHS, and the Homeland Security Advisor for each State to initiate the rapid implementation of these procedures.

Reports Issued

NSTAC Cellular Shutdown Letter to the President, January 2006